U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34029990

Date: OCT. 21, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a fine art painter, seeks classification under the employment-based, first-preference immigrant visa category as a noncitizen with "extraordinary ability." *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). Successful petitioners for U.S. permanent residence in this category must demonstrate "sustained national or international acclaim" and extensively document recognition of their achievements in their fields. *Id.*

The Director of the Nebraska Service Center denied the petition. The Director concluded that the Petitioner met the category's initial evidentiary requirements. But, in a final merits determination, the Director found insufficient evidence of the Petitioner's claimed extraordinary ability in his field. On appeal, the Petitioner contends that the Director misanalysed and disregarded evidence of his ability.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that the evidence, in the aggregate, does not place him among the small percentage at his field's very top. We will therefore dismiss the appeal.

I. LAW

To qualify as a noncitizen with extraordinary ability, a petitioner must demonstrate that they:

- Have "extraordinary ability in the sciences, arts, education, business, or athletics;"
- Seek to continue work in their field of expertise in the United States; and
- Through their work, would substantially benefit the country.

Section 203(b)(1)(A)(i)-(iii) of the Act. The term "extraordinary ability" means expertise commensurate with "one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2).

Evidence of extraordinary ability must initially demonstrate a noncitizen's receipt of either "a major, international recognized award" or satisfaction of at least three of ten lesser evidentiary criteria.

8 C.F.R. § 204.5(h)(3)(i-x).[1] If a petitioner meets either standard, USCIS must then make a final merits determination as to whether the record, as a whole, establishes their sustained national or international acclaim and recognized achievements placing them among the small percentage at their field's very top. *Amin v. Mayorkas*, 24 F.4th 383, 391 (5th Cir. 2022) (holding that USCIS' two-step analysis "is consistent with the governing statute and regulation"); *see generally* 6 *USCIS Policy Manual* F.(2)(B), www.uscis.gov/policy-manual.

II. ANALYSIS

A. Facts and Procedural History

The record shows that the Petitioner, a Georgian native and citizen, has been creating art since he was a small child. He complied with his father's wishes by obtaining a degree from an agricultural institute in his home country. But the Petitioner never worked in that field. Instead, he used his diploma as part of an art piece he created and became a professional painter. He began as a hyperrealist painter but ultimately developed his style in modernistic impressionism. He had his first personal exhibition in Georgia in 2007. Five years later, he received his country's medal of honor for his art. In 2018, he received a similar award from Ukraine. The Petitioner's paintings have been displayed around the world, including multiple times at the annual [redacted] New York, which attracts tens of thousands of collectors, dealers, and art lovers.

The Petitioner states that, since last arriving in the United States in 2023, he has continued creating art. He says he intends to permanently paint in this country and has signed contracts with two U.S. art dealers.

The record does not indicate – nor does the Petitioner claim – his receipt of an internationally recognized award. He must therefore meet at least three of the ten initial evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i-x). The record supports the Director's findings that he satisfied three requirements regarding:

- his receipt of lesser nationally or internationally recognized awards;
- his participation as a judge of others' work in his field; and
- the display of his work at artistic exhibitions or showcases.

See 8 C.F.R. § 204.5(h)(3)(i), (iv), (vii).

On appeal, the Petitioner contends that he met five other evidentiary criteria. But, because he has satisfied the required minimum, we need not determine whether he meets any other evidentiary requirements. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies need not make "purely advisory findings" on issues unnecessary to their ultimate decisions).

[1] If an evidentiary criterion does not "readily apply" to a petitioner's occupation, they may submit "comparable evidence" to establish eligibility. 8 C.F.R. § 204.5(h)(4).

B. The Final Merits Determination

To establish extraordinary ability, a petitioner must demonstrate that they have sustained national or international acclaim and that their achievements have been recognized in their field, identifying them as one of that small percentage who has risen to the field's very top. *See generally* 6 *USCIS Policy Manual* F.(2)(B)(2). "[T]he petitioner must explain the significance of the submitted evidence, and how it demonstrates that the person has achieved sustained national or international acclaim and recognition in their field of expertise." *Id.*

When determining final eligibility, USCIS should consider the petition in its entirety, weighing all evidence in the totality. *See generally* 6 *USCIS Policy Manual* F.(2)(B)(2). The Agency should consider any potentially relevant evidence of record, even if it does not fit one of the regulatory criteria or does not serve as comparable evidence. *Id.* A petition's approval or denial should stem from the evidence's type and quality. *Id.*

The Petitioner contends that the Director misanalysed evidence of his extraordinary ability. He notes that USCIS policy requires a final merits determination to consider "the petition in its entirety" and "any potentially relevant evidence in the record, even if such evidence does not fit one of the . . . regulatory [evidentiary] criteria or was not presented as comparable evidence." 6 *USCIS Policy Manual* F.(2)(B)(2). The Petitioner argues that, contrary to this policy, the Director considered only evidence supporting the three evidentiary criteria the Petitioner met.

The record shows that the decision *discussed* only the evidence supporting the satisfied three evidentiary criteria. But the decision indicates the Director's *consideration* of all evidence of record. The final merits decision states that "USCIS must now examine the evidence *presented in its entirety*" and concludes that "[t]he record *as a whole, including the evidence discussed above*, does not establish [the Petitioner's] eligibility for the benefit sought." (emphasis added). The Director's decision need not address every piece of evidence. *See Ojo v. Garland*, 25 F.4th 152, 171 (2d Cir. 2022) (an agency need not "expressly parse or refute on record each individual argument or piece of evidence");[2] *see also Matter of Sanchez-Lopez*, 26 I&N Dec. 71, 77 (BIA 2012), *vacated on other grounds*, 27 I&N Dec. 256 (BIA 2018) (in the context of removal proceedings, stating that an Immigration Judge need not discuss every piece of evidence).

Also, a U.S. court of appeals has upheld a final merits determination where USCIS "looked at each of the criteria [a petitioner] satisfied and explained why [their] accomplishments under each merited little weight in the overall assessment." *Amin*, 24 F.4th at 394. The record therefore does not support the Petitioner's contention that the Director misanalysed evidence of his extraordinary ability.

The Petitioner also contends that the Director disregarded evidence that establishes his extraordinary ability in his field. He points to a letter from a historian who served on a commission that recommended the Petitioner's receipt of Georgia's medal of honor. As the Petitioner notes, the letter

[2] Because the U.S. Court of Appeals for the Second Circuit has jurisdiction over the Petitioner's residence, we must follow its precedent decisions in proceedings involving similar issues.

describes him as one of only three artists to receive the award and as "the Claude Monet of Georgia" and "a founding father of modern Georgia impressionism."

The historian's letter evidences the Petitioner's influence on Georgian painting. But the letter does not demonstrate his place at the top of his field as a whole. *See* 8 C.F.R. § 204.5(h)(2) (defining the term "extraordinary ability"). The letter does not discuss other artists in the field or the Petitioner's relation to them.

The Petitioner further contends that, when discussing proof of his participation as a judge of others' work in the field, the Director considered his judging activities at only one 2020 art competition, disregarding his judging at a 2019 competition. The record, however, does not support the Petitioner's contention. The Director's decision mentioned the Petitioner's participation as a judge at both the 2020 and 2019 competitions. *See* Decision, p. 10 of 12 ("You provided evidence that demonstrates you participated as a judge of the 2020 [redacted] International Prize and 2019 International [redacted]

The Petitioner also argues that the Director erred by finding display of his work at artistic exhibitions and showcases "sporadically." The Director's decision acknowledges displays of the Petitioner's work in [redacted] 2015, [redacted] of 2018, [redacted] 2019, 2021 and [redacted] 2023. The Petitioner states that he had three exhibitions in both 2018 and 2019, and two in 2023. He points to a copy of a 2023 article about him that details his more recent exhibitions.

We agree with the Petitioner that the record does not support the Director's finding of his works' "sporadic" display. But we agree with the Director's conclusion that the record does not demonstrate "that [his] displayed work record distinguish[es] [him] as one of that small percentage who has risen to the very top of the field." We also agree that he "did not show how the number of [his] displayed works at artistic exhibitions or showcases compared with those of others at the very top of the field." The Director's mischaracterization of the display of the Petitioner's work was therefore harmless error. *See Li Hua Lin v. U.S. Dep't of Justice*, 453 F.3d 99, 107 (2d Cir. 2006) (stating that an error does not require a remand if the appellate adjudicator is "confident that the agency would reach the same result upon a reconsideration cleansed of errors"); *see generally Matter of O-R-E-*, 28 I&N Dec. 330, 350 n.5 (BIA 2021) (citing cases regarding harmless or scrivener's errors).

The Petitioner also cites articles about awards he won in 2012, 2014, and 2018 and an "academician" comparing him to Niko Pirosmani, a Georgian painter who rose to prominence after his death in 1918. The Petitioner states: "Without properly considering all of th[is] evidence, [USCIS] committed an error to conclude that the Petitioner has not maintained his national or international acclaim."

But, considering the specified articles and all the evidence of record in the aggregate, the Petitioner has not demonstrated his place among the small percentage at his field's very top. *See* 8 C.F.R. § 204.5(h)(2) (defining the term "extraordinary ability"). The record lacks sufficient information about other artists in the Petitioner's field and his place in the field relative to them.

The Petitioner is an acclaimed and recognized painter in the modernistic impressionist style. For the foregoing reasons, however, he has not demonstrated his place among the small percentage at the field's very top. *See Amin*, 24 F.4th at 386 ("[G]iven the lofty bar for extraordinary ability

classifications, we cannot say that the agency acted arbitrarily when it determined that [a petitioner] was not 'extraordinary' but merely very good.")

III. CONCLUSION

The evidence of record, in the aggregate, does not demonstrate the Petitioner's place among the small percentage at his field's very top.

ORDER: The appeal is dismissed.